

(k) any Liability arising from or relating to any terminated, divested or discontinued business (or the termination, divestiture or discontinuation thereof) of the AT&T Broadband Group.

In the event that any Liability is included in both the definition of "AT&T Broadband Liability" and "AT&T Communications Liability" then (i) if it is specifically referred to in a definition or schedule or otherwise (including in any of the Ancillary Agreements), it shall be treated in accordance with such specific reference and (ii) otherwise it shall be treated as an AT&T Broadband Liability or AT&T Communications Liability to the extent it relates to the AT&T Broadband Business or the AT&T Communications Business, respectively.

**"AT&T Broadband Material Adverse Effect"** has the meaning set forth in the Merger Agreement.

**"AT&T Broadband Merger"** has the meaning set forth in the Merger Agreement.

**"AT&T Broadband Real Property"** means all right, title and interest in real property, wherever located, held in the name of AT&T Broadband or any AT&T Broadband Entity; *provided that* AT&T Broadband Real Property does not include rights, title or interests (whether fee, leasehold or otherwise) in any AT&T Communications Real Property.

**"AT&T Broadband Subsidiaries"** means those entities set forth on Schedule 1.19 and their respective Subsidiaries but excluding AT&T Broadband T-Holdings, Inc. (formerly TCI Telephony Holdings, Inc.) and its Subsidiaries.

**"AT&T Broadband's Share"** has the meaning set forth in Section 6.04(b).

**"AT&T Common Stock"** means the common stock, par value \$1.00 per share, of AT&T.

**"AT&T Communications Action"** has the meaning set forth in Section 6.02(d).

**"AT&T Communications Assets"** means:

(a) any Assets reflected in the AT&T Communications Balance Sheet, unless disposed of to third parties after the date thereof (and, in the case of any such Assets disposed of after the date thereof, the proceeds from such disposal);

(b) any Assets acquired after the date of the AT&T Communications Balance Sheet by AT&T or any of its Subsidiaries utilizing AT&T Communications Assets;

(c) any AT&T Communications Contracts;

(d) any capital stock or other ownership interests in any member of the AT&T Communications Group (other than AT&T) (unless disposed of after the date thereof);

(e) AT&T's interest in Concert and American Ridge;

(f) any AT&T Communications Real Property;

(g) any Assets that are expressly contemplated by this Agreement or any other Ancillary Agreement (or any Schedule hereto or thereto) to be retained by or assigned to AT&T or any other member of the AT&T Communications Group;

(h) (i) any governmental licenses, permits, franchises, approvals, certificates, consents and other governmental authorizations held in the name of AT&T or any of its Subsidiaries that are primarily related to the AT&T Communications Business and (ii) any intrastate telephony licenses, permits, franchises, approvals, certificates or other governmental authorizations that are used in the AT&T Communications Business (in the case of (i) or (ii), to the extent any of the foregoing would be required to be transferred pursuant hereto, such items will be AT&T Communications Assets only to the extent they are transferable upon receipt of any relevant Consent);

(i) AT&T's shares of AWS;

(j) any Assets listed or described on Schedule 1.28(j);

(k) any Assets that as of the Distribution Date are Leased Assets (as defined in the Local Network Connectivity Services Agreement); and

(l) any Assets that are not AT&T Broadband Assets specified in clauses (a) through (k) of the definition of AT&T Broadband Assets and that are used or held for use primarily in connection with the AT&T Communications Business (it being agreed that (i) any Assets owned by AT&T or any of its controlled Affiliates immediately prior to March 9, 1999 shall be deemed primarily used or held for use in connection with the AT&T Communications Business and (ii) Assets that were paid for, built or otherwise directly or indirectly

acquired for consideration (as reflected in current and historic financial records, including subsidiary ledgers, journals and other financial books and records) by a Group shall be deemed to be primarily used or held for use by the Group that most recently so paid for or so built or acquired them).

AT&T Communications Assets shall not in any event include any Assets reflected on the AT&T Broadband Balance Sheet, except for those Assets specified in clauses (b), (d), (e), (f), (g), (i), (j) and (k) of the definition of AT&T Communications Assets.

Subject to the foregoing sentence, in the event that any Asset is included in both the definition of "AT&T Broadband Asset" and "AT&T Communications Asset" then (i) if it is specifically referred to in a definition or schedule or otherwise (including in any of the Ancillary Agreements), it shall be treated in accordance with such specific reference and (ii) otherwise it shall be treated as an AT&T Broadband Asset or AT&T Communications Asset based upon whether it is used or held for use primarily in connection with the AT&T Broadband Business or primarily in connection with the AT&T Communications Business; *provided that* for purposes hereof Assets that were paid for, built or otherwise directly or indirectly, acquired for consideration (as reflected in current and historic financial records, including subsidiary ledgers, journals and other financial books and records) by a Group shall be deemed to be primarily used or held for use by the Group that most recently so paid for or so built or acquired them.

**"AT&T Communications Balance Sheet"** means the consolidated balance sheet dated as of December 31, 2000 included within the AT&T Communications Financial Statements.

**"AT&T Communications Business"** means the business of the AT&T Communications Group.

**"AT&T Communications Contracts"** means any contract or agreements to which AT&T or any of its Subsidiaries is a party or by which it or any of its Subsidiaries or any of their respective Assets is bound, whether or not in writing, except for any AT&T Broadband Contract, including (a) any contract or agreement listed on Schedule 1.31(a), (b) any rights and obligations of any member of the AT&T Communications Group as a party (for the benefit of the AT&T Communications Group) under any At Home Contract, (c) any letter of credit, surety bond, swap, foreign exchange or other instrument or contract not primarily relating to the AT&T Broadband Group, together with any letters of credit, surety bonds, swaps, foreign exchange or other such instruments or contracts that were entered into in connection with Indebtedness of the AT&T Communications Services Group, (d) any note, indenture, contract, agreement,

mortgage or other instrument representing Indebtedness or other Liabilities that are in either such case AT&T Communications Liabilities, (e) any contract or agreement that is expressly contemplated pursuant to this Agreement or any of the other Ancillary Agreements to be assigned or transferred to or retained by AT&T or any other member of the AT&T Communications Group, (f) any guarantee, indemnity, representation, warranty or other Liability of any member of the AT&T Broadband Group in respect of any other AT&T Communications Contract, any AT&T Communications Liability or the AT&T Communications Business, and (g) any contract or agreement entered into in the name of, or expressly on behalf of, any member of the AT&T Communications Group (other than AT&T), except to the extent clearly relating to the AT&T Broadband Group. With respect to any contract or agreement that relates in material part to both the AT&T Broadband Group and the AT&T Communications Group, the parties will cooperate in good faith to apportion the rights and obligations thereunder to the AT&T Broadband Group and the AT&T Communications Group, and to treat such contract or agreement as an AT&T Broadband Contract to the extent relating to the AT&T Broadband Group and an AT&T Communications Contract to the extent relating to the AT&T Communications Group.

**“AT&T Communications Financial Statements”** means the consolidated balance sheets, income statements, statements of cash flow and other financial statements of AT&T Communications as of and for the period ending December 31, 2000, attached hereto as Exhibit A.

**“AT&T Communications Group”** means the direct or indirect interest of AT&T (either itself or through direct or indirect subsidiaries, or any of their predecessors or successors) in (a) all businesses (including terminated, divested or discontinued businesses and operations), Assets and Liabilities (contingent or otherwise), other than the AT&T Broadband Group, and (b) any terminated, divested or discontinued businesses not specified in the definition (or related schedules) of AT&T Broadband Group. Notwithstanding the foregoing, when this Agreement refers to “a member of the AT&T Communications Group” or similar language clearly referring to a Person, it means any one of AT&T or its Subsidiaries other than the AT&T Broadband Entities.

**“AT&T Communications Liabilities”** means (without duplication):

(a) any Liabilities reflected on the AT&T Communications Balance Sheet, subject to any discharge of such Liabilities subsequent to the date of the AT&T Communications Balance Sheet;

(b) any Liabilities that are expressly contemplated by this Agreement or any other Ancillary Agreement (or the Schedules hereto or thereto) as

Liabilities to be retained or assumed by AT&T or any member of the AT&T Communications Group, subject to discharge of such Liabilities subsequent to the date of the AT&T Communications Balance Sheet, and all agreements, obligations and Liabilities of any member of the AT&T Communications Group under this Agreement or any of the other Ancillary Agreements;

(c) any Liabilities of any member of the AT&T Communications Group (other than AT&T), excluding, for the avoidance of doubt, any Liabilities as of the Distribution Date of T-Holdings or any of its Subsidiaries and including, for the avoidance of doubt, any Liabilities of T-Holdings or any of its Subsidiaries arising after the Distribution Date;

(d) any Liabilities relating to, arising out of or resulting from any AT&T Communications Contract, excluding, for the avoidance of doubt, any Liabilities under any At Home Contract except for Liabilities of any member of the AT&T Communications Group as a party (for the benefit of the AT&T Communications Group) under any At Home Contract;

(e) any Liabilities incurred after the date of the AT&T Communications Balance Sheet by any member of the AT&T Communications Group;

(f) any Liabilities relating to, arising out of or resulting from any Actions except (i) those primarily related to, arising out of or resulting from the AT&T Broadband Business (including those listed on Schedule 1.23(g)) or as expressly set forth herein, (ii) 50% of the excess of any Liability related to, arising out of or resulting from any Specified Matter (including any legal or other fees incurred as a result of, or with respect to, any Specified Matter) over any amount AT&T receives from AWS in respect thereof, (iii) 50% of any Liability related to, arising out of or resulting from any At Home Matter (including any legal or other fees incurred as a result of, or with respect to, any At Home Matter) and (iv) 50% of any Liability related to, arising out of or resulting from the Specified Transactions (including any legal or other fees incurred as a result of, or with respect to, any such Liability and including any Liability AT&T may have under Section 910 of the NYBCL in connection with the Distribution);

(g) any Liabilities, including any employee-related Liabilities and Environmental Liabilities, primarily relating to, arising out of or resulting from:

(i) the AT&T Communications Group, including the operation of the AT&T Communications Business, as conducted at any time prior to, on or after the Distribution Date (including any Liability relating to, arising out of or resulting from any act or failure to act by any director,

officer, employee, agent or representative (whether or not such act or failure to act is or was within such Person's authority));

(ii) the operation of any business conducted by any member of the AT&T Communications Group at any time after the Distribution Date (including any Liability relating to, arising out of or resulting from any act or failure to act by any director, officer, employee, agent or representative (whether or not such act or failure to act is or was within such Person's authority)); or

(iii) any AT&T Communications Assets (including any AT&T Communications Contracts, any AT&T Communications Real Property and any Leased Assets (except with respect to any Liabilities of the lessees under the applicable leases));

in any such case whether arising before, on or after the Distribution Date;

(h) any Liability arising from or relating to any terminated, divested or discontinued business (or the termination, divestiture or discontinuation thereof) of the AT&T Communications Group;

(i) any Liability arising from any breach by any member of the AT&T Communications Group after the Distribution Date of any covenant or agreement entered into in connection with the separation, divestiture or termination of LMC and its Subsidiaries; and

(j) any other direct or indirect Liabilities of AT&T or any of its Subsidiaries that do not otherwise constitute AT&T Broadband Liabilities.

In the event that any Liability is included in both the definition of "AT&T Broadband Liability" and "AT&T Communications Liability" then (i) if it is specifically referred to in a definition or schedule or otherwise (including in any of the Ancillary Agreements), it shall be treated in accordance with such specific reference and (ii) otherwise it shall be treated as an AT&T Broadband Liability or AT&T Communications Liability to the extent it relates to the AT&T Broadband Business or the AT&T Communications Business, respectively.

**"AT&T Communications Real Property"** means all right, title and interest in real property, wherever located, of AT&T or any of its Subsidiaries (other than any AT&T Broadband Entity), including: (a) all land (the **"Land"**) owned by AT&T or any of its Subsidiaries (other than any AT&T Broadband Entity), including all buildings, structures and other improvements now or hereafter located thereon (the **"Owned Real Property"**), (b) all real property

leased, subleased or otherwise occupied by AT&T or any of its Subsidiaries (other than any AT&T Broadband Entity) (the “**Leased Real Property**” and together with the Owned Real Property, the “**Real Property**”), (c) all easements, licenses, permits, rights of way, reservations, privileges and other estates and rights of AT&T or any of its Subsidiaries (other than any AT&T Broadband Entity) either in gross or appurtenant pertaining to such Real Property or to any other real property, (d) all right, title and interest of AT&T or any of its Subsidiaries (other than any AT&T Broadband Entity) in and to all strips and gores, all alleys adjoining land, and the land lying in the bed of any street, road or avenue, opened or proposed, in front of or adjoining the Land to the center line thereof, and all right, title and interest of AT&T or any of its Subsidiaries (other than any AT&T Broadband Entity) in and to any award made or to be made in lieu thereof and in and to any unpaid award for any taking by condemnation or any damages to the Owned Real Property by reason of any change of grade of any street, road or avenue, (e) all right, title and interest of AT&T or any of its Subsidiaries (other than any AT&T Broadband Entity) in and to the airspace above the Owned Real Property (and the rights to use such airspace) and any transferable development or similar rights appurtenant to the Owned Real Property by allocation under applicable laws, by zoning lot merger or otherwise and (f) all rights, licenses, easements, leases, indefeasible rights of use, title, attachment rights, authorizations and other rights pertaining to poles, conduits and cable held by AT&T or any of its Subsidiaries (other than any AT&T Broadband Entity).

“**AT&T Communications’ Share**” has the meaning set forth in Section 6.04(b).

“**AT&T Indemnitees**” has the meaning set forth in Section 5.03.

“**AT&T Material Adverse Effect**” means a material adverse effect on the financial condition, assets or results of operations of the AT&T Communications Group, taken as a whole, excluding any such effect resulting from or arising in connection with (i) changes or conditions generally affecting the industries in which the AT&T Communications Group operates, (ii) changes in general economic, regulatory or political conditions, or (iii) the announcement of this Agreement or of the transactions contemplated hereby.

“**AT&T Meeting**” has the meaning set forth in Section 4.02(a).

“**AT&T Subsidiary Preferred Stock**” has the meaning set forth in the Merger Agreement.

“**At Home**” means At Home Corporation, a Delaware corporation and/or its bankruptcy estate, as applicable.

**“At Home Contracts”** means any contracts or agreements between At Home or any of its Subsidiaries, on the one hand, and any member of the AT&T Communications Group (for the benefit of the AT&T Communications Group), on the other hand.

**“At Home Matters”** means (i) the currently pending lawsuits styled Linda Ward, Brian Lewis and Donnie Doby, Jr. v. At Home Corporation, et al. (Case No. 418233, Superior Court of California, San Mateo County), and In re: At Home Corporation Stockholders’ Litigation (Master File No. 413094, Superior Court of California, San Mateo County), and any other shareholder claims or lawsuits or claims or lawsuits by At Home alleging any breach of fiduciary or contractual duties by AT&T or any of its Affiliates relating to At Home or its Subsidiaries prior to the Effective Time, including any such claim or lawsuit against any officers, directors or employees of AT&T or any of its Subsidiaries whether in their capacity as a director, officer or employee of At Home or its Subsidiaries or otherwise, and (ii) any claims or lawsuits by At Home, creditors of At Home or its Subsidiaries, either previously or subsequently filed, concerning activities prior to the Effective Time, including any lawsuit or claim asserting that AT&T or any of its Subsidiaries (other than At Home or its Subsidiaries) breached contractual or fiduciary obligations to At Home or its Subsidiaries, received a fraudulent conveyance from At Home or its Subsidiaries, or is liable for any Liability of At Home or any of its Subsidiaries, and including any such claim or lawsuit against any officers, directors or employees of AT&T or any of its Subsidiaries whether in their capacity as a director, officer or employee of At Home or its Subsidiaries or otherwise.

**“AWS”** means AT&T Wireless Services, Inc., a Delaware corporation.

**“Business Day”** means a day other than a Saturday, Sunday or other day on which commercial banks in New York City are authorized or required by law to close.

**“Code”** means the Internal Revenue Code of 1986, as amended.

**“Comcast”** means Comcast Corporation, a Pennsylvania corporation.

**“Commission”** means the Securities and Exchange Commission.

**“Concert”** means Concert B.V.

**“Consents”** means any consents, waivers or approvals from, or notification requirements to, any third parties, other than Governmental Approvals.



**“CPR”** means the Center for Public Resources.

**“Corporate Name Agreement”** means the Corporate Name Agreement by and between AT&T and AT&T Comcast Corporation, in the form attached hereto as Exhibit B.

**“Delayed Transfer Assets”** means any AT&T Broadband Assets that this Agreement or any other Ancillary Agreement provides or contemplates are to be transferred after the Distribution Date, including Assets that require a Consent or Governmental Approval to transfer, which Consent or Governmental Approval is not obtained on or prior to the Distribution Date.

**“Delayed Transfer Liabilities”** means any AT&T Broadband Liabilities that are expressly provided in this Agreement to be assumed after the Distribution Date upon the removal of legal impediments or the receipt of Consents or Governmental Approvals necessary for the transfer of such AT&T Broadband Liabilities.

**“Dispute Date”** has the meaning set forth in Section 6.03(c).

**“Distribution”** means the distribution by AT&T to the holders of AT&T Common Stock and, if the QUIPS Exchange is completed, to the holders of the QUIPS of all of the outstanding shares of AT&T Broadband Common Stock on the Distribution Date in accordance with Article 4.

**“Distribution Date”** means the date on which the Distribution occurs.

**“Distribution Registration Statement”** has the meaning set forth in Section 4.02(b).

**“Effective Time”** has the meaning set forth in the Merger Agreement.

**“Employee Benefits Agreement”** means the Employee Benefits Agreement by and between AT&T and AT&T Broadband, in the form attached hereto as Exhibit C.

**“Environmental Law”** has the meaning set forth in the Merger Agreement.

**“Environmental Liabilities”** means all Liabilities relating to, arising out of or resulting from any Environmental Law or contract or agreement relating to environmental, health or safety matters (including all removal, remediation or cleanup costs, investigatory costs, governmental response costs, natural resources

damages, property damages, personal injury damages, costs of compliance with any settlement, judgment or other determination of Liability and indemnity, contribution or similar obligations) and all costs and expenses (including allocated costs of in-house counsel and other personnel), interest, fines, penalties or other monetary sanctions in connection therewith.

**"Exchange Act"** means the Securities Exchange Act of 1934, as amended, together with the rules and regulations promulgated thereunder.

**"Exchange Agreement"** has the meaning set forth in the Merger Agreement.

**"GAAP"** has the meaning set forth in the Merger Agreement.

**"Governmental Approvals"** means any notices, reports or other filings to be made, or any consents, registrations, approvals, permits or authorizations to be obtained from, any Governmental Authority.

**"Governmental Authority"** has the meaning set forth in the Merger Agreement.

**"Group"** means the AT&T Broadband Group or the AT&T Communications Group, as the context requires.

**"Indebtedness"** means, with respect to any Person, (a) any obligation of such Person (i) for borrowed money, (ii) evidenced by a note, debenture or similar instrument (including a purchase money obligation) given in connection with the acquisition of any property or assets, including securities, (iii) for the deferred purchase price of property or services, except trade accounts payable arising in the ordinary course of business, or (iv) under any lease or similar arrangement that would be required to be accounted for by the lessee as a capital lease in accordance with GAAP; (b) any guarantee (or keepwell agreement) by such Person of any indebtedness of others described in the preceding clause (a); and (c) all obligations to reimburse any bank or other Person for amounts paid under a letter of credit or similar instrument. For purposes of clarification, (x) Indebtedness includes, without duplication, obligations (or guarantees of obligations) related to preferred securities issued by a wholly owned trust Subsidiary and (y) Indebtedness (in the case of AT&T Broadband, any AT&T Broadband Entity or any member of the AT&T Broadband Group) includes the monetizations set forth on Schedule 1.23(i).

**"Indemnifying Party"** has the meaning set forth in Section 5.04(a).

**"Indemnatee"** has the meaning set forth in Section 5.04(a).

**"Indemnity Payment"** has the meaning set forth in Section 5.04(a).

**"Information"** means information, whether or not patentable or copyrightable, in written, oral, electronic or other tangible or intangible forms, stored in any medium, including studies, reports, records, books, contracts, instruments, surveys, discoveries, ideas, concepts, know-how, techniques, designs, specifications, drawings, blueprints, diagrams, models, prototypes, samples, flow charts, data, computer data, disks, diskettes, tapes, computer programs or other software, marketing plans, customer names, communications by or to attorneys (including attorney-client privileged communications), memos and other materials prepared by attorneys or under their direction (including attorney work product), and other technical, financial, employee or business information or data.

**"Insurance Policies"** means the insurance policies written by insurance carriers other than American Ridge or Western Range under which, prior to the Distribution Date, AT&T and/or AT&T Broadband or one or more of their Subsidiaries or Affiliates (or their respective officers or directors) are insured parties, excluding insurance policies funding Benefit Plans (as defined in the Employee Benefits Agreement) (which are addressed in the Employee Benefits Agreement).

**"Insurance Proceeds"** means those monies:

(a) received by an insured from an insurance carrier other than American Ridge or Western Range; or

(b) paid by an insurance carrier other than American Ridge or Western Range on behalf of an insured;

in any such case net of any applicable premium adjustments (including reserves and retrospectively rated premium adjustments) and net of any costs or expenses (including allocated costs of in-house counsel and other personnel) incurred in the collection thereof.

**"Intellectual Property Agreement"** means the Intellectual Property Agreement by and between AT&T and AT&T Broadband, in the form attached hereto as Exhibit D.

**"IRS"** means the U.S. Internal Revenue Service.

**"Issuing Party"** has the meaning set forth in Section 6.02(c).

**“Liabilities”** means any and all losses, claims, charges, debts, demands, Actions, damages, obligations, payments, costs and expenses, bonds, indemnities and similar obligations, covenants, controversies, promises, omissions, guarantees, make whole agreements and similar obligations, and other liabilities, including all contractual obligations, whether absolute or contingent, inchoate or otherwise, matured or unmatured, liquidated or unliquidated, accrued or unaccrued, known or unknown, whenever arising, and including those arising under any law, rule, regulation, Action, threatened or contemplated Action (including the costs and expenses of demands, assessments, judgments, settlements and compromises relating thereto and attorneys’ fees and any and all costs and expenses (including allocated costs of in-house counsel and other personnel), whatsoever reasonably incurred in investigating, preparing or defending against any such Actions or threatened or contemplated Actions), order or consent decree of any Governmental Authority or any award of any arbitrator or mediator of any kind, and those arising under any contract, commitment or undertaking, including those arising under this Agreement or any other Ancillary Agreement (other than the Tax Sharing Agreement) or incurred by a party hereto or thereto in connection with enforcing its rights to indemnification hereunder or thereunder, in each case, whether or not recorded or reflected or required to be recorded or reflected on the books and records or financial statements of any Person; *provided, however*, that Liabilities shall not include any liabilities for (i) Taxes based on, measured by or calculated with respect to net income or profits or (ii) Non-Income Taxes covered by Section 3.6 of the Tax Sharing Agreement.

**“LMC”** means Liberty Media Corporation, a Delaware corporation.

**“Local Network Connectivity Services Agreement”** means the Local Network Connectivity Services Agreement dated as of January 1, 2001, as amended, between AT&T and AT&T Broadband, LLC, a Delaware limited liability company.

**“Mergers”** has the definition set forth in the Merger Agreement.

**“Merger Agreement”** means the Agreement and Plan of Merger dated as of December 19, 2001 by and among AT&T, Comcast and the other parties referred to therein.

**“Microsoft”** has the meaning set forth in the Recitals.

**“Microsoft QUIPS Claim”** has the meaning set forth in Section 5.02(e).

**“Non-Income Taxes”** has the meaning set forth in the Tax Sharing Agreement.

**“Notified Action”** has the meaning set forth in Section 6.02(c).

**“NYBCL”** means the Business Corporation Law of the State of New York.

**“Other Party”** has the meaning set forth in Section 6.02(c).

**“Parent Common Stock”** has the meaning set forth in the Merger Agreement.

**“Patent Assignment”** means the Patent Assignment by and between AT&T and AT&T Broadband, LLC, a Delaware limited liability company, in the form attached hereto as Exhibit F.

**“Person”** means an individual, a general or limited partnership, a corporation, a trust, a joint venture, an unincorporated organization, a limited liability entity, any other entity and any Governmental Authority.

**“Primary Commercial Agreements”** has the meaning set forth in the definition of Ancillary Agreements.

**“Primary Indemnity Claim”** has the meaning set forth in Section 6.04(b).

**“Primary Transaction Agreements”** has the meaning set forth in the definition of Ancillary Agreements.

**“Prime Rate”** means the rate that The Bank of New York (or any successor thereto or other major money center commercial bank agreed to by the parties hereto) announces from time to time as its prime lending rate, as in effect from time to time.

**“Proposed Acquisition Transaction”** has the meaning set forth in Section 6.02(b).

**“Proxy Statement”** has the meaning set forth in Section 4.02(a).

**“QUIPS”** has the meaning set forth in the Merger Agreement.

**“QUIPS Exchange”** has the meaning set forth in the Merger Agreement.

**“QUIPS Fair Market Value”** has the meaning set forth in the Merger Agreement.

**“QUIPS Transfer”** has the meaning set forth in the Merger Agreement.

**“Real Property Instruments”** has the meaning set forth in Section 2.05(a).

**“Record Date”** means the close of business on such date as is mutually agreed upon by the parties.

**“Registration Statement Claim”** has the meaning set forth in Section 5.02(d).

**“Registration Statements”** means the Distribution Registration Statement and all other filings by AT&T, AT&T Broadband or any of their respective Affiliates with the Commission or any comparable state or foreign body made in connection with the transactions contemplated by this Agreement or any other Ancillary Agreement.

**“Representation Letter”** means the representation letter and any other materials (including the ruling request and the related supplemental submissions to the IRS) delivered or deliverable by AT&T and others in connection with the rendering by tax counsel and the issuance by the IRS of the Tax Opinions/Rulings that shall be in form and substance reasonably satisfactory to AT&T and AT&T Broadband.

**“Restructuring Transaction”** has the meaning set forth in Section 2.01(h).

**“Scheduled Debt”** has the meaning set forth in Section 3.01.

**“Securities Act”** means the Securities Act of 1933, as amended, together with the rules and regulations promulgated thereunder.

**“Security Interest”** means any mortgage, security interest, pledge, lien, charge, claim, option, right to acquire, voting or other restriction, right-of-way, covenant, condition, easement, encroachment, restriction on transfer or other encumbrance of any nature whatsoever.

**“Separation”** means the transfer of the AT&T Broadband Assets to AT&T Broadband and the assumption by AT&T Broadband of the AT&T Broadband Liabilities, all as more fully described in this Agreement and the other Ancillary Agreements.

**“Separation Transactions”** has the meaning set forth in the Separation and Distribution Agreement dated as of June 4, 2001 by and between AT&T and AWS.

**“Specified Matter”** has the meaning set forth in the Separation and Distribution Agreement, dated as of June 4, 2001, by and between AT&T and AWS.

**“Specified Transactions”** has the meaning set forth in clause (g) of the definition of AT&T Broadband Liabilities.

**“Spin-Off Disqualification”** means (a) the Separation and Distribution failing to qualify under the provisions of Sections 355, 361(c) and 368(a)(1)(D) of the Code, or (b) the shares of AT&T Broadband failing to qualify as “qualified property” for purposes of Section 355(c)(2) or 361(c) of the Code by reason of Section 355(e) of the Code.

**“Split-Off”** has the meaning set forth in the Ninth Supplement to the Inter-Group Agreement dated as of June 14, 2001 by and among AT&T and the Liberty Media Parties (as defined therein).

**“Subsequent Tax Opinion/Ruling”** has the meaning set forth in Section 6.02(c).

**“Subsidiary”** has the meaning set forth in the Merger Agreement.

**“Subsidiary Preferred Stock Exchange”** has the meaning set forth in Section 4.01(d).

**“Tax Opinions/Rulings”** has the meaning set forth in Section 6.02(b).

**“Tax Related Losses”** has the meaning set forth in Section 6.02(d).

**“Tax Sharing Agreement”** means the Tax Sharing Agreement by and between AT&T and AT&T Broadband, in the form attached hereto as Exhibit G.

**“Taxes”** has the meaning set forth in the Tax Sharing Agreement.

**“Third Party Claim”** has the meaning set forth in Section 5.05(a).

**“Third Party Tax Claim”** has the meaning set forth in Section 6.03(a).

**“T-Holdings”** means AT&T Broadband T-Holdings, Inc. (f/k/a TCI Telephony Holdings, Inc.), a Delaware corporation.

**“TOPRS”** has the meaning set forth in the Merger Agreement.

**“Trademark and Service Mark Agreement”** means the Trademark and Service Mark Agreement by and among AT&T, AT&T Broadband, LLC, a Delaware limited liability company, and MediaOne Group, Inc., a Delaware corporation, in the form attached hereto as Exhibit H.

**“Transaction Disqualification”** has the meaning set forth in Section 6.04(a).

**“TWE Option”** has the meaning set forth in the Merger Agreement.

**“Underpayment Rate”** has the meaning set forth in Section 6.03(c).

**“Western Range”** means Western Range Insurance Company, a Vermont corporation.

## ARTICLE 2 THE SEPARATION

SECTION 2.01. *Transfer of Assets and Assumption of Liabilities.* (a) Subject to Section 4.03, on or prior to the Distribution Date, AT&T will assign, transfer, convey and deliver to AT&T Broadband, and agrees to cause its applicable Subsidiaries to assign, transfer, convey and deliver to AT&T Broadband, and AT&T Broadband will accept from AT&T and its applicable Subsidiaries, all of AT&T’s and its applicable Subsidiaries’ respective right, title and interest in all AT&T Broadband Assets, other than the Delayed Transfer Assets.

(b) Subject to Section 4.03, on or prior to the Distribution Date, AT&T Broadband will assume and agree faithfully to perform and fulfill all the AT&T Broadband Liabilities that are not already Liabilities of an AT&T Broadband Subsidiary, other than the Delayed Transfer Liabilities, in accordance with their respective terms. AT&T Broadband shall be responsible for all AT&T Broadband Liabilities that are not already Liabilities of an AT&T Broadband Subsidiary, regardless of when or where such Liabilities arose or arise, or whether the facts on which they are based occurred prior to, on or subsequent to the date hereof, regardless of where or against whom such Liabilities are asserted or determined



(including any AT&T Broadband Liabilities arising out of claims made by AT&T's, or AT&T Broadband's, respective directors, officers, employees, agents, Subsidiaries or Affiliates against any member of the AT&T Broadband Group or the AT&T Communications Group) or whether asserted or determined prior to the date hereof, and regardless of whether arising from or alleged to arise from negligence, recklessness, violation of law, fraud or misrepresentation by any member of the AT&T Broadband Group or the AT&T Communications Group or any of their respective directors, officers, employees, agents, Subsidiaries or Affiliates. For the avoidance of doubt, but subject to Section 5.03 including the indemnification obligations thereunder with respect to Liabilities described in clause (g) of the definition of AT&T Broadband Liabilities, AT&T Broadband is not itself agreeing to assume any Liabilities of At Home or its Subsidiaries.

(c) Subject to Section 4.03, on or prior to the Distribution Date, AT&T will assume and agree faithfully to perform and fulfill all the AT&T Communications Liabilities that are not already Liabilities of AT&T or any of its Subsidiaries (other than any AT&T Broadband Entity) in accordance with their respective terms. AT&T shall be responsible for all AT&T Communications Liabilities that are not already Liabilities of an AT&T Subsidiary (other than any AT&T Broadband Entity), regardless of when or where such Liabilities arose or arise, or whether the facts on which they are based occurred prior to, on or subsequent to the date hereof, regardless of where or against whom such Liabilities are asserted or determined (including any AT&T Communications Liabilities arising out of claims made by AT&T's, or AT&T Broadband's, respective directors, officers, employees, agents, Subsidiaries or Affiliates against any member of the AT&T Broadband Group or the AT&T Communications Group) or whether asserted or determined prior to the date hereof, and regardless of whether arising from or alleged to arise from negligence, recklessness, violation of law, fraud or misrepresentation by any member of the AT&T Broadband Group or the AT&T Communications Group or any of their respective directors, officers, employees, agents, Subsidiaries or Affiliates.

(d) Each of the parties hereto agrees that the Delayed Transfer Assets will be assigned, transferred, conveyed and delivered, and the Delayed Transfer Liabilities will be assumed, in accordance with the terms of the agreements that provide for such assignment, transfer, conveyance and delivery, or such assumption, after the date of this Agreement.

(e) In the event that at any time or from time to time (whether prior to or after the Distribution Date) any party hereto (or any member of such party's respective Group) shall receive or otherwise possess any Asset that is allocated to any other Person pursuant to this Agreement or any other Ancillary Agreement, such party shall promptly transfer, or cause to be transferred, such Asset to the

Person so entitled thereto. Prior to any such transfer, the Person receiving or possessing such Asset shall hold such Asset in trust for any such other Person.

(f) Prior to the transactions described in Section 2.01(a)-(c), (i) AT&T shall contribute \$18 million in cash to AT&T Broadband, (ii) AT&T shall cause T-Holdings and its Subsidiaries to sell all of their respective Assets that are used or held for use primarily in the AT&T Broadband Business to AT&T Broadband for \$18 million in cash and (iii) AT&T Broadband shall purchase from T-Holdings and its Subsidiaries for \$18 million in cash all of such Assets. Prior to the time that AT&T Broadband LLC becomes a Subsidiary of AT&T Broadband, AT&T shall cause AT&T Broadband LLC to distribute all of the outstanding shares of T-Holdings to AT&T.

(g) The provisions of this Section 2.01 and the definition of AT&T Broadband Asset do not apply to any intellectual property, including any Software, Proprietary Information, Materials (as such terms are defined in the Intellectual Property Agreement), copyrights, inventions, patents, patent applications, trade secrets and other technology to the extent it is allocated in the Intellectual Property Agreement, except for transfers made pursuant to the Patent Assignment.

(h) Anything in this Agreement to the contrary notwithstanding, if either AT&T or Comcast reasonably believes that the amount of income that would otherwise be required to be recognized under Treasury Regulations Section 1.1502-13 or 1.1502-19 by reason of the Distribution may be reduced or eliminated as a result of one or more restructuring transactions consummated prior to the Distribution, then the parties shall negotiate in good faith to reach agreement regarding such restructuring transaction. Notwithstanding anything in the preceding sentence, AT&T shall be permitted to effect, at its own expense, any restructuring transaction under this paragraph; *provided that* (i) Comcast shall be afforded reasonable notice and opportunity to comment upon plans to effect any such transaction, and (ii) such transaction shall not result in the failure of any AT&T Broadband Asset that was intended under this Agreement to be transferred to or held by any member of the AT&T Broadband Group to be so transferred or held, unless (A) such asset consists of the capital stock or other ownership interest in an AT&T Broadband Subsidiary the assets of which will be transferred, on or prior to the Distribution Date, to another member of the AT&T Broadband Group or (B) Comcast consents to such transaction, such consent not to be unreasonably withheld; *provided, further*, that AT&T shall indemnify Comcast for any increased Tax liability or other costs to Comcast or any AT&T Broadband Entity resulting from such transactions. Comcast agrees to reasonably cooperate with AT&T in connection with transactions described in this paragraph (h).

SECTION 2.02. *Disclaimer of Representations and Warranties.* EXCEPT AS MAY EXPRESSLY BE SET FORTH HEREIN, IN ANY OTHER ANCILLARY AGREEMENT OR REAL PROPERTY INSTRUMENT OR IN THE MERGER AGREEMENT, (A) NONE OF AT&T, AT&T BROADBAND OR ANY OTHER PERSON MAKES ANY REPRESENTATION OR WARRANTY OF ANY KIND WHATSOEVER, EXPRESS OR IMPLIED, WITH RESPECT TO ANY OF THE TRANSACTIONS CONTEMPLATED HEREBY (INCLUDING ANY CONSENTS OR APPROVALS REQUIRED IN CONNECTION THEREWITH) OR THE BUSINESS, ASSETS, CONDITION OR PROSPECTS (FINANCIAL OR OTHERWISE) OF, OR ANY OTHER MATTER INVOLVING, THE ASSETS, BUSINESSES OR LIABILITIES OF AT&T, AT&T BROADBAND, THE AT&T COMMUNICATIONS GROUP OR THE AT&T BROADBAND GROUP; (B) ALL OF THE ASSETS TO BE RETAINED OR TRANSFERRED OR THE LIABILITIES TO BE RETAINED, ASSUMED OR TRANSFERRED IN ACCORDANCE WITH THIS AGREEMENT SHALL BE TRANSFERRED OR ASSUMED ON AN "AS IS, WHERE IS BASIS," AND ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A SPECIFIC PURPOSE OR OTHERWISE ARE HEREBY EXPRESSLY DISCLAIMED, AND (C) NONE OF AT&T, AT&T BROADBAND OR ANY OTHER PERSON MAKES ANY REPRESENTATION OR WARRANTY WITH RESPECT TO ANY INFORMATION, DOCUMENTS OR MATERIAL MADE AVAILABLE IN CONNECTION WITH THE SEPARATION, THE DISTRIBUTION OR THE MERGER OR THE ENTERING INTO OF THIS AGREEMENT OR THE MERGER AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY AND THEREBY. EACH PARTY HERETO AGREES AND ACKNOWLEDGES THAT THE REPRESENTATIONS AND WARRANTIES IN THE MERGER AGREEMENT SHALL NOT SURVIVE THE EFFECTIVE TIME. AT&T UNDERSTANDS AND AGREES THAT NO AT&T BROADBAND ENTITY SHALL HAVE ANY LIABILITY TO AT&T OR ANY OTHER PERSON FOR MONETARY DAMAGES FOR ANY BREACH BY SUCH AT&T BROADBAND ENTITY PRIOR TO THE EFFECTIVE TIME OF THIS AGREEMENT OR ANY OTHER ANCILLARY AGREEMENT OR REAL PROPERTY INSTRUMENT.

SECTION 2.03. *Other Ancillary Agreements.* On or prior to the Distribution Date, each of AT&T and AT&T Broadband will execute and deliver or cause to be executed and delivered all Ancillary Agreements to which it or any of its Subsidiaries is a party. At the request of Comcast or AT&T, on or prior to the Distribution Date, AT&T and AT&T Broadband will execute and deliver the Interim Services and Systems Replication Agreement, in the form attached hereto as Exhibit E. Pursuant to the terms of such agreement, AT&T or AT&T Broadband, as the case may be, will provide to AT&T Broadband or AT&T, as

the case may be, such mutually agreed services as may be set forth on the schedules to such Agreement, such schedules to be on terms mutually agreed between Comcast and AT&T. If AT&T and AT&T Broadband enter into such agreement, such agreement will be considered an Ancillary Agreement. Except to the extent set forth therein, Article 11 of this Agreement shall apply to any Ancillary Agreement (other than the Tax Sharing Agreement).

SECTION 2.04. *Termination of Agreements.* (a) Except as set forth in Section 2.04(b), as of the Distribution Date, AT&T and each member of the AT&T Communications Group, on the one hand, and AT&T Broadband and each member of the AT&T Broadband Group, on the other hand, shall terminate any and all agreements, arrangements, commitments or understandings, whether or not in writing, between or among AT&T and/or any member of the AT&T Communications Group, on the one hand, and AT&T Broadband and/or any member of the AT&T Broadband Group, on the other hand, effective as of the Distribution Date. No such terminated agreement, arrangement, commitment or understanding (including any provision thereof that purports to survive termination) shall be of any further force or effect after the Distribution Date. Each party shall, at the reasonable request of any other party, take, or cause to be taken, such other actions as may be necessary to effect the foregoing.

(b) The provisions of Section 2.04(a) shall not apply to any of the following agreements, arrangements, commitments or understandings (or to any of the provisions thereof):

(i) this Agreement and the other Ancillary Agreements (and each other agreement or instrument expressly contemplated by this Agreement or any other Ancillary Agreement to be entered into by any of the parties hereto or any of the members of their respective Groups);

(ii) any agreements, arrangements, commitments or understandings listed or described on Schedule 2.04(b)(ii)(A); *provided that* the agreements set forth in Schedule 2.04(b)(ii)(B) shall be amended on the Distribution Date as set forth on such Schedule;

(iii) any agreements, arrangements, commitments or understandings listed or described on Schedule 2.04(b)(iii) to which any Person other than the parties hereto and their respective wholly owned Affiliates is a party (it being understood that to the extent that the rights and obligations of the parties and the members of their respective Groups under any such agreements, arrangements, commitments or understandings constitute AT&T Broadband Assets or AT&T Broadband Liabilities, they shall be assigned pursuant to Section 2.01);

(iv) any intercompany accounts payable or accounts receivable arising in the ordinary course of business and accrued as of the Distribution Date that are reflected in the books and records of the parties or otherwise documented in writing in accordance with past practices (regardless of whether such intercompany accounts payable or accounts receivable accrued under an agreement, arrangement, commitment or understanding that terminated pursuant to Section 2.04(a)); *provided that*, subject to Section 3.02, AT&T or AT&T Broadband, as the case may be, will pay or cause to be paid such intercompany accounts payable promptly when due;

(v) except as otherwise provided in the Tax Sharing Agreement, any written Tax sharing or Tax allocation agreements to which any member of any Group is a party;

(vi) any agreements, arrangements, commitments or understandings listed or described on Schedule 2.04(b)(vi) to which any non-wholly owned Subsidiary or Affiliate of AT&T or AT&T Broadband, as the case may be, is a party (it being understood that directors' qualifying shares or similar interests will be disregarded for purposes of determining whether a Subsidiary is wholly owned);

(vii) any agreements, arrangements, commitments or understandings that (A) either any Ancillary Agreement or any other agreement, arrangement, commitment or understanding that pursuant to the terms of this Section is not to be terminated as of the Distribution Date contemplates will be entered into or made on or after the date hereof or (B) are otherwise necessary to implement the transactions contemplated by any of the foregoing clauses or that implement term sheets contemplated by any of the foregoing clauses on terms not materially less advantageous to any member of the AT&T Broadband Group; *provided that* each of the agreements, arrangements, commitments or understandings referred in this clause (vii) must be in form and substance reasonably satisfactory to Comcast; and

(viii) any other agreements, arrangements, commitments or understandings that this Agreement or any other Ancillary Agreement expressly contemplates will survive the Distribution Date.

SECTION 2.05. *Documents Relating to Transfer of Real Property Interests and Tangible Property Located Thereon.* (a) To the extent necessary, in furtherance of the assignment, transfer and conveyance of AT&T

Communications Real Property and the assumption of the related AT&T Communications Liabilities pursuant to Section 2.01(a) and 2.01(b), on or prior to the Distribution Date each of AT&T and AT&T Broadband, or their applicable Subsidiaries, will execute and deliver such deeds, lease assignments and assumptions, leases, subleases and sub-subleases as may be necessary to effect the transactions contemplated by this Agreement, including this Section 2.05 (collectively, the “**Real Property Instruments**”). Real Property Instruments will be on mutually acceptable terms.

(b) Except as otherwise expressly provided in this Agreement or any other Ancillary Agreement and except for AT&T Broadband Assets, all leasehold improvements, fixtures, furniture, office equipment, servers, private branch exchanges, artwork and other tangible property (other than equipment subject to capital or operating equipment leases, which will be transferred or retained based on whether the associated capital or operating equipment lease is or is not an AT&T Broadband Contract or as otherwise provided herein) located as of the date hereof on any AT&T Communications Real Property shall be transferred to a member of the AT&T Communications Group.

(c) Schedule 2.05(c) sets forth a list of AT&T Communications Real Property currently used in connection with both the AT&T Communications Business and the AT&T Broadband Business and that following the Distribution Date will be leased or subleased by members of the AT&T Communications Group to members of the AT&T Broadband Group, on terms and for the transition period reflected in Schedule 2.05(c).

(d) Schedule 2.05(d) sets forth a list of AT&T Broadband Real Property currently used in connection with both the AT&T Communications Business and the AT&T Broadband Business and that following the Distribution Date will be leased or subleased by AT&T Broadband or any of the AT&T Broadband Entities to members of the AT&T Communications Group, on terms and for the transition period reflected in Schedule 2.05(d).

**SECTION 2.06. Documents Relating to Other Transfers of Assets and Assumption of Liabilities.** In furtherance of the assignment, transfer and conveyance of AT&T Broadband Assets and the assumption of AT&T Broadband Liabilities pursuant to Sections 2.01(a) and 2.01(b), on or prior to the Distribution Date, (a) AT&T shall execute and deliver, and shall cause its Subsidiaries to execute and deliver, such bills of sale, stock powers, certificates of title, assignments of contracts and other instruments of transfer, conveyance and assignment as and to the extent necessary to evidence the transfer, conveyance and assignment of all of AT&T's and its Subsidiaries' right, title and interest in and to the AT&T Broadband Assets to AT&T Broadband and (b) AT&T Broadband

shall execute and deliver, to AT&T and its respective Subsidiaries such bills of sale, stock powers, certificates of title, assumptions of contracts and other instruments of assumption, as and to the extent necessary to evidence the valid and effective assumption by AT&T Broadband of the AT&T Broadband Liabilities that are not already Liabilities of an AT&T Broadband Entity; *provided that* any instruments executed and delivered pursuant to this Section 2.06 shall be in form and substance reasonably satisfactory to Comcast.

SECTION 2.07. *Governmental Approvals and Consents.* (a) If and to the extent that the valid, complete and perfected transfer or assignment to AT&T Broadband of any AT&T Broadband Assets (or from the AT&T Broadband Group of any AT&T Communications Assets held by any member of such Group) would be a violation of applicable laws or require any Consent or Governmental Approval in connection with the Separation or the Distribution, then the transfer or assignment to or from the AT&T Communications Group, as the case may be, of such AT&T Broadband Assets or AT&T Communications Assets, respectively, shall be automatically deemed deferred and any such purported transfer or assignment shall be null and void until such time as all legal impediments are removed and/or such Consents or Governmental Approvals have been obtained. Notwithstanding the foregoing, any such Transferred Asset shall be deemed an Asset of the transferee AT&T Communications Group or the AT&T Broadband Group, as applicable, for purposes of determining whether any Liability is a Liability of the AT&T Communications Group or the AT&T Broadband Group.

(b) If the transfer or assignment of any Asset intended to be transferred or assigned hereunder is not consummated prior to or at the Distribution Date, whether as a result of the provisions of Section 2.07(a) or for any other reason, then the Person retaining such Asset shall thereafter hold such Asset for the use and benefit, insofar as reasonably possible, of the Person entitled thereto (at the expense of the Person entitled thereto). In addition, the Person retaining such Asset shall take such other actions as may be reasonably requested by the Person to whom such Asset is to be transferred in order to place such Person, insofar as reasonably possible, in the same position as if such Asset had been transferred as contemplated hereby and so that all the benefits and burdens relating to such AT&T Broadband Asset (or such AT&T Communications Asset, as the case may be), including possession, use, risk of loss, potential for gain, and dominion, control and command over such Asset, are to inure from and after the Distribution Date to the AT&T Broadband Group (or the AT&T Communications Group, as the case may be). To the extent permitted by law and to the extent otherwise permissible in light of any required Consent and/or Governmental Approval, the AT&T Broadband Group shall be entitled to, and shall be responsible for, the management of any AT&T Broadband Asset not yet transferred to it as a result of

this Section 2.07(b) and the parties agree to use reasonable commercial efforts to cooperate and coordinate with respect thereto.

(c) If and when the Consents and/or Governmental Approvals, the absence of which caused the deferral of transfer of any Asset pursuant to Section 2.07(a), are obtained, the transfer of the applicable Asset shall be effected in accordance with the terms of this Agreement and/or the other applicable Ancillary Agreement.

(d) The Person retaining an Asset due to the deferral of the transfer of such Asset shall not be obligated, in connection with the foregoing, to expend any money unless the necessary funds are advanced by the Person entitled to the Asset, other than reasonable out-of-pocket expenses, attorneys' fees and recording or similar fees, all of which shall be promptly reimbursed by the Person entitled to such Asset.

SECTION 2.08. *Novation of AT&T Broadband Liabilities.* (a) Each of AT&T and AT&T Broadband, at the reasonable written request of the other, shall use its reasonable commercial efforts to obtain, or to cause to be obtained, any release, consent, substitution, approval or amendment required to novate and assign all obligations under agreements, leases, licenses and other obligations or Liabilities of any nature whatsoever that constitute AT&T Broadband Liabilities, or to obtain in writing the unconditional release of all parties to such arrangements other than any member of the AT&T Broadband Group, so that, in any such case, the members of the AT&T Broadband Group will be solely responsible for such Liabilities; *provided, however,* that none of AT&T, AT&T Broadband or any of their respective Subsidiaries shall be obligated to pay any consideration or surrender, release or modify any rights or remedies therefor to any third party from whom such releases, consents, approvals, substitutions and amendments are requested except as specifically set forth in the Merger Agreement or elsewhere in this Agreement.

(b) If AT&T or AT&T Broadband is unable to obtain, or to cause to be obtained, any such required release, consent, substitution, approval or amendment, the applicable member of the AT&T Communications Group shall continue to be bound by such agreements, leases, licenses and other obligations and, unless not permitted by law or the terms thereof, AT&T Broadband shall, as agent or subcontractor for such member of the AT&T Communications Group, pay, perform and discharge fully all the obligations or other Liabilities of such member of the AT&T Communications Group thereunder from and after the date hereof. AT&T Broadband shall indemnify each AT&T Indemnitee and hold it harmless against any Liabilities arising in connection therewith. AT&T shall cause each member of the AT&T Communications Group, without further consideration, to



pay and remit, or cause to be paid or remitted, to AT&T Broadband or the applicable member of the AT&T Broadband Group promptly all money, rights and other consideration received by it or any member of the AT&T Communications Group in respect of such performance. If and when any such release, consent, substitution, approval or amendment shall be obtained or such agreement, lease, license or other rights or obligations shall otherwise become assignable or able to be novated, AT&T shall promptly assign, or cause to be assigned, all its rights, obligations and other Liabilities thereunder or any rights, obligations or other Liabilities of any member of the AT&T Communications Group to AT&T Broadband or to another member of the AT&T Broadband Group without payment of further consideration and AT&T Broadband, without the payment of any further consideration, shall, or shall cause such other member of the AT&T Broadband Group to, assume such rights and obligations. Notwithstanding the foregoing, unless AT&T shall so elect, AT&T Broadband shall assume all Liabilities of any nature whatsoever that would constitute AT&T Broadband Liabilities as of the Distribution Date, except for Liabilities of another member of the AT&T Broadband Group.

SECTION 2.09. *Novation of AT&T Communications Liabilities.* (a) Each of AT&T and AT&T Broadband, at the reasonable written request of the other, shall use its reasonable commercial efforts to obtain, or to cause to be obtained, any release, consent, substitution, approval or amendment required to novate and assign all obligations under agreements, leases, licenses and other obligations or Liabilities of any nature whatsoever that constitute AT&T Communications Liabilities, or to obtain in writing the unconditional release of all parties to such arrangements other than any member of the AT&T Communications Group, so that, in any such case, the members of the AT&T Communications Group will be solely responsible for such Liabilities; *provided, however*, that none of AT&T, AT&T Broadband or any of their respective Subsidiaries shall be obligated to pay any consideration or surrender, release or modify any rights or remedies therefor to any third party from whom such releases, consents, approvals, substitutions and amendments are requested except as specifically set forth in the Merger Agreement or elsewhere in this Agreement.

(b) If AT&T or AT&T Broadband is unable to obtain, or to cause to be obtained, any such required release, consent, approval, substitution or amendment, the applicable member of the AT&T Broadband Group shall continue to be bound by such agreements, leases, licenses and other obligations and, unless not permitted by law or the terms thereof, AT&T shall, as agent or subcontractor for such member of the AT&T Broadband Group, pay, perform and discharge fully all the obligations or other Liabilities of such member of the AT&T Broadband Group thereunder from and after the date hereof. AT&T shall indemnify each AT&T Broadband Indemnitee and hold each of them harmless against any